IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3329 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

PRABHUDAS BHIKHABHAI CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3329 of 1988

MR PV HATHI for Petitioner No. 1

MR RC KODEKAR AGP for Respondents No. 1-2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 31/01/2002

C.A.V. JUDGEMENT

1. This petition praying to refix seniority on the basis of the grievance arising in the year 1964 and further seeking to secure promotion was filed in 1988

and came up for final hearing in June, 2001 after superannuation of the petitioner from the promotional post of Joint Secretary in the year 1994.

2. A brief chronology of facts would indicate the delay and laches before and after a half-hearted approach to this Court.

2.1 The petitioner, a member of the Scheduled Caste community, was selected by the respondent No.2 (GPSC) for appointment to the post of Junior Assistant and appointed on 26.12.1961 subject to the condition of passing the departmental examination within two trials after a training period of three months. Upon his failure to do so, his services were terminated with effect from 7.1.1963. Under a Resolution dated 21.2.1963, he was given a third chance to pass the examination with a promise to be reinstated if he would pass the examination; and accordingly, he was reinstated on 11.9.1963. By the order dated 20.11.1964, the break in service from 7.1.1963 to 11.9.1963 was condoned subject to a clear and express stipulation that his seniority was to be counted only from the date of reinstatement. His seniority was accordingly fixed in all successive seniority lists and his representations in that regard were replied no less than seven times by the respondent. The grievance of the petitioner that another Junior Assistant, whose break in service was condoned in the same way by the same order was given a higher place in seniority, is met with the reply that it was a mistake which was subsequently corrected. The reply to the petitioner's representation dated 2.1.1984, which was the first speaking order according to the petitioner, also reiterated that the fixation of the petitioner's seniority was in order, and even without break in service, the petitioner would have been junior to the others who had passed the examination before him.

4. In the above facts, the whole case and all the grievances of the petitioner are woven on the basis that even though his service was actually terminated on 7.1.1963 and he was reinstated on 11.9.1963 after an additional chance to pass the examination, his date of entry into the service should have been taken as 1.1.1962 for the purpose of seniority. The order and promise of being reinstated by giving an additional chance under the Resolution dated 21.2.1963 were harped upon to repeatedly submit that the petitioner's service ought to have been treated as continuous from the date of his initial appointment. As against that, the affidavit-in-reply filed on behalf of the respondent has repeatedly

reiterated that the Resolution dated 21.2.1963 had no retrospective effect and, the petitioner having been out of job at that point of time, it was a gesture of sympathy and grace of the respondent to have granted to the petitioner the benefit of an additional chance to pass the examination. The petitioner's submissions and contentions alleging discrimination in comparison with the employees in other cadres or departments have been denied in detail by the respondent.

5. The petitioner's petition is liable to be rejected on merits as well as on the ground of delay and laches. No rule or precedent was pointed out on behalf of the petitioner in support of the submission that, after the clear break in service, the earlier period of service had to be counted for the purpose of seniority, particularly when the subsequent reinstatement was attributable to the fortuitous circumstance of the Government making a Resolution dated 21.2.1963 allowing the Scheduled Caste, Scheduled Tribe and other backward classes one more chance to pass departmental examination and the Government offering such chances to the petitioner even after the termination of his service. On the other hand, when denial of seniority was made abundantly clear by the express order dated 20.11.1964 and in the making of all the successive seniority lists, it was for the petitioner to agitate the issue and approach the Court within a reasonable time, if necessary. Instead, the petitioner has filed the petition as a Deputy Secretary when the higher post of Joint Secretary had fallen vacant and was likely to be filled up by promotion from amongst other Deputy Secretaries on the basis of their seniority.

6. In the above facts and circumstances, it may be apposite to quote the following observations of the Supreme Court in P.S.SADASIVASWAMY v. STATE OF TAMIL NADU [AIR 1974 SC 2271] :

" 2.....A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the

> case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to pur forward stale claims and try to unsettle settled matters. The petitioner's petition should, therefore, have been dismissed in limine. Entertaining such petitions is a waste of time of the Court. It clogs the work of the Court and impedes the work of the Court in considering legitimate grievances as also its normal work. We consider that the High Court was right in dismissing the appellant's petition as well as the appeal".

and in B.S.BAJWA AND ANOTHER v. STATE OF PUNJAB [(1998) 2 SCC 523:

> "7.....It is well-settled that in service matters the question of seniority should not be reopened in such situations after the lapse of a reasonable period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case for making such a grievance. This alone was sufficient to decline interference under Article 226 and to reject the writ petition."

7. In the facts of the present case, the actual cause of action, if any, having arisen to the petitioner on 20.11.1964 when the break in service was condoned with an express stipulation to count the seniority from the date of reinstatement and the same decision having been followed in making of successive seniority lists and the petitioner having failed to make out any case of discrimination or arbitrary action on the part of the respondent, the petition is dismissed on merits as well as on the ground of delay and laches. Rule is discharged with no order as to costs.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)